

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION**

TOMMY TOSHANNEN SANDERS,

Plaintiff,

v.

DUNKLIN COUNTY JUSTICE CENTER,

Defendant.

)
)
)
)
)
)
)
)
)
)
)

No. 1:08-CV-111 CAS

MEMORANDUM AND ORDER

This matter is before the Court on the motion of plaintiff (registration no. 1023370), an inmate at the Dunklin County Justice Center, for leave to commence this action without payment of the required filing fees. For the reasons stated below, the Court finds that plaintiff does not have sufficient funds to pay the entire filing fee and will assess an initial partial filing fee of \$7.00. See 28 U.S.C. § 1915(b)(1). Furthermore, based upon a review of the complaint, the Court finds that the complaint should be dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B).

28 U.S.C. § 1915(b)(1)

Pursuant to 28 U.S.C. § 1915(b)(1), a prisoner bringing a civil action in forma pauperis is required to pay the full amount of the filing fee. If the prisoner has insufficient funds in his or her prison account to pay the entire fee, the Court must assess and, when funds exist, collect an initial partial filing fee of 20 percent of the greater of (1) the average monthly deposits in the prisoner's account, or (2) the average monthly balance in the prisoner's account for the prior six-month period. After payment of the initial partial filing fee, the prisoner is required to make monthly payments of 20 percent of the preceding month's income credited to the prisoner's account. 28 U.S.C. § 1915(b)(2). The agency having custody of the prisoner will forward these monthly payments to the

Clerk of Court each time the amount in the prisoner's account exceeds \$10, until the filing fee is fully paid. Id.

Plaintiff has submitted an affidavit and a certified copy of his prison account statement for the six-month period immediately preceding the submission of his complaint. A review of plaintiff's account indicates an average monthly deposit of \$35.00, and an average monthly balance of \$10.65. Plaintiff has insufficient funds to pay the entire filing fee. Accordingly, the Court will assess an initial partial filing fee of \$7.00, which is 20 percent of plaintiff's average monthly deposit.

28 U.S.C. § 1915(e)

Pursuant to 28 U.S.C. § 1915(e)(2)(B), the Court may dismiss a complaint filed in forma pauperis if the action is frivolous, malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief against a defendant who is immune from such relief. An action is frivolous if "it lacks an arguable basis in either law or in fact." Neitzke v. Williams, 490 U.S. 319, 328 (1989). An action fails to state a claim upon which relief can be granted if it does not plead "enough facts to state a claim to relief that is plausible on its face." Bell Atlantic Corp. v. Twombly, 127 S. Ct. 1955, 1974 (2007).

In reviewing a pro se complaint under § 1915(e)(2)(B), the Court must give the complaint the benefit of a liberal construction. Haines v. Kerner, 404 U.S. 519, 520 (1972). The Court must also weigh all factual allegations in favor of the plaintiff, unless the facts alleged are clearly baseless. Denton v. Hernandez, 504 U.S. 25, 32-33 (1992); Scheuer v. Rhodes, 416 U.S. 232, 236 (1974).

The Complaint

Plaintiff brings this action pursuant to 42 U.S.C. § 1983 alleging violations of his civil rights. Named as the defendant is the Dunklin County Justice Center in Kennett, Missouri. Plaintiff asserts

that earlier this year, several guards at the Justice Center told plaintiff's then-girlfriend¹ (another inmate and an alleged witness in his criminal proceedings) that he was corresponding with other women and/or that he was receiving visits from other women. Plaintiff believes that the guards lied to his girlfriend in order to get her to be a witness against him.

Plaintiff also complains that in February 2008, he and the other inmates in B-Pod were served oatmeal for breakfast with spices² in it. Plaintiff claims that he was told that some other inmates put spices in B-Pod's oatmeal because they were supposedly making noise while the other inmates were trying to sleep. Plaintiff admits that after calling the guards' attention to the spiced oatmeal, the prisoners were provided with a substitute meal. Plaintiff seeks monetary and injunctive relief as a result of these perceived violations.

Discussion

To establish a *prima facie* case under 42 U.S.C. § 1983, a plaintiff must allege two elements: (1) the action occurred "under color of law" and (2) the action is a deprivation of a constitutional right or a federal statutory right. Parratt v. Taylor, 451 U.S. 527, 535 (1981). Plaintiff's complaint fails to allege a violation of a constitutional or federal statutory right. Accordingly, his complaint is subject to dismissal.

Moreover, even if plaintiff's allegations did rise to the level of a constitutional violation, his lawsuit would still have to be dismissed. Plaintiff's claim against the Dunklin County Justice Center is legally frivolous because the Justice Center is not a suable entity. Ketchum v. City of West

¹Throughout plaintiff's complaint and the documents attached to his complaint, plaintiff identifies the female acquaintance differently. At times he identifies her as his "girlfriend," while at other times he identifies her as his "wife" or "fiancé."

²The spice is identified in the pleadings as "something green," either oregano, sage or parsley.

Memphis, Ark., 974 F.2d 81, 82 (8th Cir. 1992) (departments or subdivisions of local government are “not juridical entities suable as such.”); Catlett v. Jefferson County, 299 F. Supp. 2d 967, 968-69 (E.D. Mo. 2004).

Accordingly,

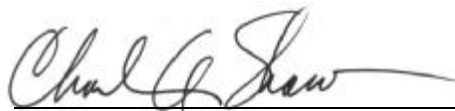
IT IS HEREBY ORDERED that plaintiff’s motion to proceed in forma pauperis is **GRANTED**. [Doc. 2]

IT IS FURTHER ORDERED that the plaintiff shall pay an initial filing fee of \$7.00 within thirty (30) days of the date of this Order. Plaintiff is instructed to make his remittance payable to “Clerk, United States District Court,” and to include upon it: (1) his name; (2) his prison registration number; (3) the case number; and (4) that the remittance is for an original proceeding.

IT IS FURTHER ORDERED that the Clerk shall not issue process or cause process to issue upon the complaint because the complaint is legally frivolous or fails to state a claim upon which relief can be granted, or both.

IT IS FURTHER ORDERED that plaintiff’s motion for appointment of counsel is **DENIED** as moot. [Doc. 4]

An Order of Dismissal will accompany this Memorandum and Order.

A handwritten signature in cursive script, appearing to read "Charles A. Shaw", written in dark ink.

CHARLES A. SHAW
UNITED STATES DISTRICT JUDGE

Dated this 14th day of August, 2008.